

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION**

Michael Hunter,)	
)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
)	
vs.)	
)	
Lynn Jordheim, Jeffrey C. Clapper, Clare)	
Hochhalter, Gary Annear, Kenneth)	
Aldridge, Ralph Erickson, Unknown)	
Named Sheriff of Cass County, Unknown)	Case No. 3:14-cv-044
Two Named US Marshals, Unknown)	
Named Deputy Marshal, James Hill,)	
Richard Henderson, Unknown Director)	
of the United "Snakes" Bureau of Prisons,)	
and Clarence Thomas,)	
)	
Defendants.)	

Michael Hunter initiated this *Bivens* action on April 17, 2014, by filing a motion for leave to proceed *in forma pauperis* and a complaint. See Docket No. 1. On May 12, 2014, Hunter filed a motion for leave to amend his complaint. See Docket No. 10. Magistrate Judge Karen Klein granted Hunter's motion for leave to proceed *in forma pauperis* and amend his complaint on May 13, 2014. See Docket No. 11. Hunter then filed an amended complaint. See Docket No. 12.

Magistrate Judge Charles S. Miller, Jr. conducted an initial review of the complaint pursuant to 28 U.S.C. § 1915A, and submitted a Report and Recommendation on June 25, 2014. See Docket No. 29. In his recommendation, Judge Miller determined Hunter's application to proceed *in forma pauperis* was improvidently granted because Hunter had previously filed at least three actions as a prisoner that were dismissed because the actions were frivolous, malicious, or failed to state a claim.

The Prison Litigation Reform Act (“PLRA”) contains what is commonly referred to as the “three strikes” provision, codified at 28 U.S.C. § 1915(g). This provision effectively bars a prisoner from filing a civil action or appealing a judgment in a civil action *in forma pauperis* if, on three or more occasions, the prisoner filed an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim. Judge Miller determined Hunter previously filed at least three actions that were dismissed as frivolous, malicious, or failing to state a claim. Accordingly, Judge Miller recommended the Court vacate its previous order granting Hunter leave to proceed *in forma pauperis* (Docket No. 4) and dismiss the action if Hunter does not pay the filing fee within thirty (30) days, unless Hunter demonstrates good cause for why the court’s order should not be vacated.

Neither party objected to Judge Miller’s Report and Recommendation. In addition, Hunter has failed to pay the filing fee. The Court finds Hunter has failed to demonstrate good cause for why the court’s order granting Hunter’s motion for leave to proceed *in forma pauperis* should not be vacated. The Court has carefully reviewed the entire record and the relevant law and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 29) and **ORDERS** the following:

- (1) The Court’s Order (Docket No. 11) granting Hunter’s motion for leave to proceed *in forma pauperis* be **VACATED**;
- (2) The Plaintiff’s Complaint (Docket No. 12) be **DISMISSED WITHOUT PREJUDICE**;
- (3) The Plaintiff’s “Motion for Issuance of Temporary Restraining Order and Issue a Preliminary Injunction after Hearing” (Docket No. 2), “Motion to Declare 28 U.S.C. Section 1915(a) Unconstitutional” (Docket No. 4), “Motion for an Immediate Hearing,

to Issue a Temporary Restraining Order, Preliminary Injunction and Issue Writ for Production” (Docket No. 6), “Ex Parte Motion for Injunction and for Hearing and Production” (Docket No. 17), “Motion to Appoint Counsel and Order Service and Order a Judge/Liberal Appointed” (Docket No. 21), “Motion to Assign a Out of District Liberal Judge (Docket No. 22), “Motion to Consent and for Orders for Writ, Hearing and Injunction, Appoint Counsel” (Docket No. 24), and “Renewed Petition for Writ of Mandamus (Docket No. 26) be deemed **MOOT**; and

(4) Dismissal of this action be deemed a strike for purposes of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

Dated this 11th day of August, 2014.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court